

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DAVID BRANDON BALL,

Movant,

v.

**Case No. 2:16-cv-05558
Criminal Case No. 2:15-cr-00071-01**

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION and ORDER
SEALING EXHIBIT NO. 5**

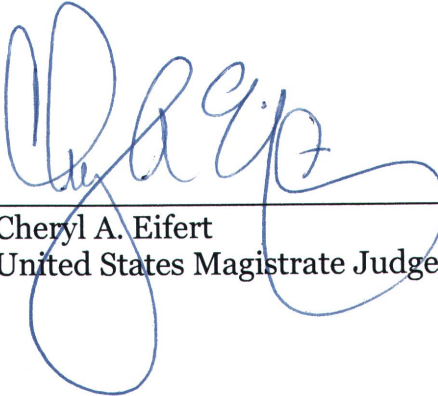
Pending before the Court is Respondent's Motion to File Under Seal, (ECF No. 29), attaching Exhibit No. 5 to the Response of the United States to Order to Respond to Motion Under 28 U.S.C. § 2255. (ECF No. 28). Respondent requests that Exhibit No. 5 be sealed, because it is a presentence report not subject to public disclosure. Due to the highly confidential nature of the document, this Court **ORDERS** Exhibit No. 5 to the Response of the United States to Order to Respond to Motion Under 28 U.S.C. § 2255, to be **SEALED**.

The undersigned is cognizant of the well-established Fourth Circuit precedent recognizing a presumption in favor of public access to judicial records. *Ashcraft v. Conoco, Inc.*, 218 F.3d 288 (4th Cir. 2000). As stated in *Ashcraft*, before sealing a document, the Court must follow a three step process: (1) provide public notice of the request to seal; (2) consider less drastic alternatives to sealing the document; and (3) provide specific reasons and factual findings supporting its decision to seal the documents

and for rejecting alternatives. *Id.* at 302. In this case, Exhibit No. 5 to Respondent's Response to Order to Respond to Motion Under 28 U.S.C. § 2255 shall be sealed and will be designated as sealed on the Court's docket. The Court deems this sufficient notice to interested members of the public. The Court has considered less drastic alternatives to sealing the document, but in view of the confidential and protected nature of the document, and the format on which the information is contained, no such alternatives are feasible. Moreover, the public's right to be informed is greatly outweighed by the interests to be protected in this circumstance. Accordingly, the Court finds that sealing Exhibit No. 5 to Respondent's Response to Order to Respond to Motion Under 28 U.S.C. § 2255 does not unduly prejudice the public's right to access court documents.

The Clerk is instructed to provide a copy of this Order to the Movant and all counsel of record.

ENTERED: August 24, 2016



Cheryl A. Eifert
United States Magistrate Judge